

### REMARKS

The Office Action mailed July 31, 2006 has been received and reviewed. Claims 1-116 are in the case. Of these claims, claims 39-75 have been withdrawn by prior election. Claims 7, 19, 22-38, 94 and 95 were previously cancelled. 1-4, 8-18, 20, 21, 76-80, 83-93, 96-100, 102-109, and 111-116 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker (6,216,111) in view of Noble, Jr. (6,356,634). Claims 5 and 82 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Noble, Jr. and further in view of Rogers et al. (5,946,386). Claims 6, 28, 81, 101 and 110 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Noble, Jr., Rogers and further in view of Miner et al. (5,652,789).

For the reasons set forth below, claims 1-6, 8-18, 20, 21, 76-93 and 96-116 are believed to be in condition for allowance. Applicant respectfully requests favorable reconsideration of the application in view of the following remarks.

#### **Rejection of Claims Under 35 U.S.C. §103(a)**

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See MPEP §2142).

The initial burden is on the examiner to provide some suggestion of the desirability of

doing what the inventor has done. References must expressly or impliedly suggest that claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *Id.*

When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

Applicant respectfully submits that under these required tenets, and in view of the following arguments, Examiner has not established a prima facie case for obviousness.

#### **Background of the Cited References and Claimed Invention**

Walker teaches a system and method for telemarketing presentations. The invention disclosed in Walker is to provide incentives to a customer for listening to a recorded sales presentation and to confirm that the customer listened by periodically playing recorded questions. *See* Walker Col.2, lines 56-62. The computer presents a canned presentation mingled with questions that a customer answers by depressing keys on their telephone. *See* Walker Col.4, line 56-59; Col. 5, lines 37-39; Col. 5, lines 63-67; Col. 6, lines 16-19; Col. 6, lines 56-59; Col. 7,

lines 57-59. Walker also allows an agent to speak at some point in the sales presentation.

Walker does not teach the discretionary play of scripts outside the sales presentation information.

Walker does not teach a method of computer interaction with a customer wherein the goal is to make the customer think he or she is interacting with a human.

The purpose of Noble is to provide consistent voice quality and delivery of scripts. In Noble, the software provides for an agent to record their voice and view the entire script being played. Script delivery is not intended to be discretionary with the agent. Script delivery must be authorized and is restricted. See Col. 4, ll. 58-66; Col. 5, ll. 9-11, 16-17, 62-66; and Col. 8 lines 42-47. The agent's voice, is the only voice that can be played. See Col. 5, ll. 16-18; Col. 6, ll. 54-55, and Col. 8 ll. 21-22. Nobel manages the play of successive recorded scripts, but does not give the agent authorization or capability to play anything other than canned portions of sales presentation information. Nobel does not teach the flexibility of script presentation or the ability to go "off script" with prerecorded conversational interjections.

Rodgers teaches the use of a call management system which transfers call control to a user workstation, thereby providing improved capabilities for the use without the limitations of telephone systems. Rogers allows for specific call handling options when a VIP call is detected. VIP Rules are defined in Rogers as specific rules "created to specify special handling for important callers, sets of callers or even for all callers. These VIP rules precede and augment direct user controls . . . ." Rogers teaches call handling protocols. Rogers does not teach a way to present sales presentations.

Miner teaches electronic assistants to handle certain aspects of calls and then transfer the

call to the intended live recipient. The electronic assistant in Miner does not attempt to appear as a live agent. In Miner, the electronic assistant announces to the caller, "I'm the electronic assistant for John Smith." Miner does not teach nor suggest a novel way to present a sales presentation using conversational scripts.

There are prior art patents that suggest ways to present prerecorded information. The problem that Applicant's invention overcomes is the mechanical presentation of prerecorded information tips off a customer to suspect that they are interacting with a computer playing a prerecorded presentation, instead of interacting with a live person. This is a significant problem for telemarketers that has not been addressed by the prior art. There has been a long-felt need for telemarketers using computers to accomplish mass calling, to overcome the problem of losing sales due to hangups when customers realize that they are interacting with a computer. The prior art has never before had to address the level of sophistication and suspension of today's customers when it comes to telemarketing. The prior art does not teach the use of prerecorded conversational approaches to presenting information. The prior art does not teach using prerecorded scripts to mimic how people *actually* talk. The prior art may teach presenting preapproved information in prerecorded form, but it does not teach the *prerecorded* adlibbing and prerecorded conversational interjecting that Applicant teaches. The prior art teaching prerecorded presentations of information, is mechanical and structured in such a way that it is quickly obvious to a customer that the information is not "live." Applicant overcomes this long-felt problem.

Prerecorded sales presentations in today's world must be conversational and fluid with interruptions and quick affirmations and comments or remarks that have nothing to do with the information being presented. The sales presentation can't have the "pause" specifically required in Nobel, nor can they have Nobel's restriction on the ability of the Agent to go "off-script" in a prerecorded conversational way. Each call is unique and the agent must have the ability to react to the call with prerecorded interjection type scripts that are not part of the sales presentation information. Agents must be allowed to intervene on the fly with conversational recordings that are "off scripts" or in other words that are not part of the sales presentation information. Customers are at a level of sophistication regarding telemarketers that they've never been at before. It is not enough to present sales information in a dialogue form where each prerecorded script drives the conversation a desired direction to efficiently present information. The dialogue must be human sounding. When prerecorded script presentations are mechanical the call and the customer are lost. Applicant solves the problem in a novel way by allowing the telemarketer to appear to give *real-time, adlib, non-informational responses without going live*. Applicant provides an interjection menu that does not relate to the information script menu. Applicant allows the telemarketer to play things such as "uh huh," "yeah," "I'm sorry, what?" "<throat clear sound>," "<laugher track>" etc. etc. This allows an agent to be conversational *and* prerecorded. This has not been done before.

#### **Rejection of Claims 1-4 and 8-21 Under 35 U.S.C. §103(a)**

Claims 1-4, 8-18, 20, 21, 76-80, 83-93, 96-100, 102-109, and 111-116 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Noble, Jr. The

combination of these claims does not teach nor suggest each and every limitation of Applicant's independent claims 1, 76, and 116. The Examiner states that it is obvious that Walker does not teach allowing an agent to selectively interleave recorded scripts. Examiner states that Noble allows an agent to selectively interleave recorded scripts selected from at least a script menu and a voice file. Examiner does not say that Noble teaches allowing an agent to selectively interleave live responses and recorded scripts, *the recorded scripts selected from at least a script menu and an interjection menu*. Examiner appears to take notice that interjection as part of speech is well known in the art. However, recorded scripts from an interjection menu, as taught in Applicant's specification to be non-informative, non-call campaign based conversational enhancers, are not known in the art and Examiner has not provided any references to the contrary.

Neither Walker nor Noble teach this. Walker does not teach representative interaction with the caller at all. Noble teaches "approved prerecorded cells of information that is to be communicated to the party." Noble, Col. 5 line 10-12. Noble teaches sequential presentation of scripts. Noble, Col. 5, lines 18-30, lines 53-55; Col. 6 lines 22-24. Noble states that the voice files are generally scripted to induce a response from the prospective party (Noble, Col. 6 lines 27-28) and then the representative plays a script in responsive to the party's response in order to drive the overall presentation sequentially forward. Noble, Col. 6, lines 35-42. Noble states that subsequent information scripts are played based on the party responding in a "selected manner." Applicant's point is that parties don't always respond in a selected manner. When they don't, Noble's telemarketer must go "live." Applicant can still handle unsuspected party responses with its interjection menu. Applicant can *play* "I'm sorry, could you repeat that?" or *play* a short

laugh in response to a party's unexpected joke. Noble does not teach the ability to do this. If you don't laugh at a party's attempt at humor, the party will realize that it is talking with a computer, not live person and the call will be lost. Applicant allows this flexibility *without* going "live" and this provides significant advantages over the prior art. See affidavit of John Bills. Accordingly, Applicant's invention is not obvious over Walker in view of Noble.

Furthermore, Applicant submits that there is no suggestion or motivation to combine the Walker and Noble references, as is required by MPEP § 2143.01. The Federal Circuit Court stated in *In re Denis Rouffet, Yannick Tanguy and Frederic Berthault*, 149 F.3d 1350 (Fed. Cir. 1998) that when determining the patentability of a claimed invention which combines two known elements, the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Id.* The Court reiterated its prior statements that,

"virtually all [inventions] are combinations of old elements."  
*Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698, 218 U.S.P.Q. (BNA) 865, 870 (Fed. Cir. 1983); see also *Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 U.S.P.Q. (BNA) 8, 12 (Fed. Cir. 1983). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability."  
*Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 U.S.P.Q.2D (BNA) 1551, 1554 (Fed. Cir. 1996).

To prevent the use of hindsight based on the invention to defeat

patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.

There are no reasons to combine the prior art references in the manner claimed by Applicant.

Referring to Applicant's claim 1, the Examiner states that Walker does not teach "a recorded script selected by the agent." Applicant submits that this is because the purpose of the Walker patent is simply to provide incentives to a customer for listening to a sales presentation and confirm that the customer listened. *See* Walker Col.2, lines 56-62. The computer presents a canned presentation mingled with questions that a customer answers by depressing keys on their telephone. *See* Walker Col.4, line 56-59; Col. 5, lines 37-39; Col. 5, lines 63-67; Col. 6, lines 16-19; Col. 6, lines 56-59; Col. 7, lines 57-59. The consumer know that it will be given money credits for each answer that the consumer gets right. Thus, in theory, the customer is more likely to listen.

If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Walker is about computer control. Everything is controlled by the CPU. Walker is about automation. To add the element of an agent being able to determine script selection flies in the face of clear underlying purposes of Walker. If an agent is selecting scripts on the fly, the computer is no



longer in complete control of the presentation and *computer* verification of the listening process must yield to *human* verification. Walker solicit key pad responses by the party or customer. There is no illusion of live conversation. Using Walker would destroy the purpose of Applicant's claimed invention. Thus, it is not proper to combine it with Noble.

Further, MPEP § 2141.02 requires that ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art references as a whole. Walker, as a whole, is about verification and incentives for listening. In contrast, Applicant's invention is about transparency. There is no teaching whatsoever in Walker about transparency. To the contrary, the customer in Walker knows in advance that it will be given a canned presentation. In fact, the customer initiates the call to hear the canned presentation in exchange for the provided incentive. The customer knows it is to give a response via a keypad and not by voice to a live person. There is no attempt in Walker to have the customer believe it is talking at all times to a live agent. In contrast, Applicant's "invention allows the transparent interleaving of live voice and two distinct types of prerecorded script by the agent." *See* page 13, lines 13 and 14. Figures 5 and 6, and the detailed description related thereto, highlight how "the agent determines to play scripted questions 190" and how "the agent may interject with an interjection statement 192 such as "yes," "no," "uh huh," laughter, and the like." *See* page 18, lines 17-18 and page 19, lines 6-7. "The user may also select a scripted ending statement 194 such as "thanks for purchasing our product," or a description of the product selected by the contact." *See* page 19, lines 7-9. Applicant's invention discloses a system "configured to allow the agent or user to selectively provide

prerecorded waveforms in the form of scripted dialog.” *See* page 19, lines 9-11.

Likewise, Walker, on the whole, is nothing like Noble. The purpose of Noble is to provide consistent voice quality and delivery of scripts. In Noble, the software provides for an agent to record their voice and view the entire script being played. Walker teaches minimizing agent involvement.

Nothing in Walker suggests any motivation to remove the fully automated, mistake-free, script presentation process from the CPU and place content decisions in the hands of telemarketing agents who traditionally are disinterested temporary labor getting paid minimum wage. Especially since there is absolutely no need for it, given the verification purposes of the Walker invention to play a presentation and receive only electronic inputs from the customer. Accordingly, Applicant submits that it is not obvious to combine the Walker and Noble references in rejection of Applicant's claims and Claims 1, 76, and 116 should be allowed.

With respect to claims depending from claims 1, 76, and 116, claims that are dependant on an allowable base claim are generally allowable. As presented hereinabove, Applicant asserts that claim 1 is not rendered obvious by the prior art of record, specifically Walker in view of Noble. Thus, the pending claims are allowable for at least the reason that they are dependant on an allowable base claim.

In addition, regarding claim 2, Walker does not teach executing an interaction protocol by one a human agent and a computer script. Walker teaches complete control of the interaction by the CPU. In Walker,

[T]he CPU 205 executes a program stored in the ROM 204, using information temporarily stored in the RAM 203. The CPU

controls the [Interactive Voice Response Unit] IVRU 201 and causes information to be retrieved from the storage device 210, stored in the RAM 203, and updated in the various databases . . . . The CPU selects the most appropriate sales presentation script . . . The sales presentation script is played to the customer through the IVRU.

The Examiner cites to Col. 8, lines 1-5, however, nowhere in this citation does a human agent execute an interaction protocol.

Regarding claims 3 and 4, Walker does not teach recorded data for generating a “human-sounding” waveform. Col. 8, lines 28-32 reference only an audio telephone message without regard to how it sounds. Likewise, Col. 7, lines 10-13 do not reference any form of audio recordings.

Regarding claim 12, Walker does not teach maintaining a history of recorded scripts. Col. 5, lines 48-50 merely reference the selection of sales scripts to be played. Walker makes no mention of recording a history of scripts that have been played.

Regarding claims 14-17, the Walker patent does not disclose the interleaving of responses from a human agent and a recorded script selected by the agent. In Column 8, lines 3 and 4, the Walker patent mentions that “the central controller signals a live agent to speak with the customer.” The agent does not make any decision regarding the switch from machine presentation to script. Thus, he does not select when or how agent responses (either live voice or recorded) are interleaved to form an overall conversational sales presentation. Further, in none of Examiner’s citations does it reference the agent listening, selecting or presenting content, or deciding upon intervention.

Regarding claims 18-21, the agent makes no decision to intervene into the prerecorded

content. Walker clearly teaches the agent is signaled when to speak. Any decision is taken out of the agent's hands, consistent with Walkers approach to obviate the need for, or minimize, human involvement. Walker does not teach that an agent can decide to intervene, whether by providing a live-voice response or a recorded response.

Examiner gives no reason to combine Walker with Noble to render claims 2-4 and 8-21 obvious.

Accordingly, reconsideration of claims 2-4 and 8-21 is therefore respectfully requested.

#### **Rejection of Claims 5 and 82 Under 35 U.S.C. §103(a)**

Claims 5 and 82 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Rogers et al. (US 5,946,386).

As presented hereinabove, Walker in view of Noble render claim 1 of Applicant's invention obvious. Accordingly, claim 5 and 7, which depend from claim 1 are not obvious in view of Walker and Noble. Applicant respectfully submits that the addition of Rogers does not render claims 5 and 7 obvious because the combination of the references does not teach or suggest all the claim limitations of claims 5 and 7. Claim 5 references recorded scripts that are voice waveforms created independently from the human agent. Walker teaches away from using human agents and does not teach "voice waveforms created independently from the human agent." Applicant disagrees with Examiner's claim that Rogers teaches voice waveforms created independently from the human agent. Examiner cites Rogers Col. 36, lines 12-17 and Col. 34 lines 56-57 in support of finding that the VIP rules.

The purpose, in Applicant's claims, of having the script in a voice wave form created independently from the human agent is to allow the use of a select number of professional voice actors to create the recorded scripts for use by thousands of agents without having to record the voices of thousands of agents. With the hardware and software disclosed in Applicant's application, voice created independently from the agent can be used for the primary sales presentation and the agent's own voice can be used to provide appropriate interjections and the customer will not be able to tell the difference between the two, or that the customer is really interacting with a computer.

The Rogers patent does not teach anything about the creation of voice waveforms, whether by a voice actor, or by a human. Rodgers teaches the use of a call management system which transfers call control to a user workstation, thereby providing improved capabilities for the use without the limitations of telephone systems. Rogers allows for specific call handling options when a VIP call is detected. However, this option does not address the creation of a voice waveform to be played that is independent from the agent's voice. The Examiner asserts that the VIP rules of Rogers are scripts. However, VIP Rules are specifically defined in Rogers as specific rules "created to specify special handling for important callers, sets of callers or even for all callers. These VIP rules precede and augment direct user controls . . . ." VIP rules are not scripts, but handling protocols. Rogers does not teach nor suggest the creation of voice waveforms. Further, Noble teaches away from voice waveforms independently from the human agent. Noble teaches a way for the human agent to record their own voice.

Accordingly, Claim is not rendered obvious by the combination of Walker, Noble, and

Rogers.

Regarding claim 76 and 116, the arguments presented above with respect to claims 1 support a finding of nonobviousness. Selective interleaving by an agent of scripts and voice waveforms created independently from the human agent is not taught by Walker, Noble, or Rogers individually. Additionally, the combination of Walker, Noble, and Rogers not suggested by any of these references in order to render Applicant's claim 76 obvious.

The arguments in support of nonobviousness of the dependent claims outlined above are also applicable to support a finding of nonobviousness in regard to claims 77-80 and 82-95. Examiner does not provide other assertions or citations in support of an obviousness finding on other grounds and Applicant therefore requests reconsideration of claims 76-80 and 82-95.

**Rejection of Claims 6, 28, 81, 101, and 110 Under 35 U.S.C. §103(a)**

Claims 6, 28, and 81 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Rogers and further in view of Miner et al. (US 5,652,789). Examiner points out that Walker does not teach "an audio track of a voice response recorded by a voice actor. Noble teaches voice recordings in the voice of the agent, not a voice actor. Rogers does not teach voice recordings at all. As discussed above, none of these references suggests voice recordings by voice actors. As discussed above, to establish a prima facie case of obviousness, there must be a motivation or suggestion to combine references before obviousness can be found based on the combination. Miner fails to add or suggest the modification of anything in Walker, Noble, or Rogers to get to Applicant's claims 6, 28, 81, 101 and 110. Miner does not teach anything regarding the audio track of a voice response to be played to the customer that are not created by

the agent himself. Miner teaches electronic assistants to handle certain aspects of calls and then transfer the call to the intended live recipient. The electronic assistant in Miner does not attempt to appear as a live agent. In fact, in Miner, the electronic assistant announces to the caller, "I'm the electronic assistant for John Smith." Neither Walker, Rodgers, nor Miner, requires the masking of a prerecorded script presentation to appear as a live voice conversation with a customer. Thus, there is no need nor suggestion to create human-sounding waveforms or recordings in any of these patents. There is also no need nor suggestion to use recorded voice actors as opposed to computer-generated sounds that approximate human voice. Likewise, because neither Walker, Rodgers, nor Miner teaches a method or apparatus for making a human agents live voice sound like a voice recorded independently from the agent, there is no suggestion in these patents to have voice waveforms created independently from the human agent.

Additionally, Miner is non analogous art. In order to relay on a reference as a basis for an obviousness rejection, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. MPEP § 2141.01(a). The Miner reference is neither. As mentioned, Miner deals with electronic personal assistants for communicating across various different media. Applicant's field of endeavor is telemarketing. Applicant's problem was the issue of avoiding the quick consumer disconnect when the consumer realizes he or she is conversing with a machine. Applicant's invention involves transparency, and way in which scripts are presented, intermingled with live voice, to achieve the allusion of a live caller with the benefits of prerecorded scripts. Miner

teaches a device that announces itself as an electronic assistant. The exactly the opposite of what would help the Applicant's concerns. Accordingly, Miner is not analogous and Claims 6, 28, 81, 101 and 110 should be allowed.

Thus, Applicant's invention is not rendered obvious by any combination of Walker, Noble, Rogers, or Miner and Applicant respectfully requests reconsideration of claims 1-6, 8-18, 20, 21, 76-93 and 96-118 in light of the remarks above.

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 30<sup>th</sup> day of November, 2006.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'D. Fonda', is written over a horizontal line.

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